

MARKET CONDUCT EXAMINATION REPORT
AS OF DECEMBER 31, 2004

Commerce and Industry Insurance Company
70 Pine Street
New York, New York 10270

NAIC Group Code 0012
NAIC Company Code 19410

EXAMINATION PERFORMED BY
INDEPENDENT CONTRACTORS
FOR
COLORADO DEPARTMENT OF REGULATORY AGENCIES
DIVISION OF INSURANCE

July 1, 2005

The Honorable David F. Rivera
Commissioner of Insurance
State of Colorado
1560 Broadway, Suite 850
Denver, Colorado 80202

Commissioner Rivera:

In accordance with Sections 10-1-203 and 10-3-1106, C.R.S., an examination of selected underwriting, auditing and unit statistical card practices of the workers' compensation insurance business of Commerce and Industry Insurance Company, hereinafter referred to as the "Company", has been conducted. The Company's records were examined at its home office located at Building 600, 1200 Abernathy Road, N.E., Atlanta, GA 30358-2594.

The examination covered the period from July 1, 2002 to June 30, 2003, and January 1, 2004 through December 31, 2004, for audited policies on which unit statistical cards were due to have been filed. A sample of policies from the calendar year 2004 was also reviewed, to determine the Company's current rating and underwriting practices.

The following market conduct examiners respectfully submit the results of this examination:

Lucille E. Whittle, CIE

K. C. Lang, AIE

**MARKET CONDUCT
EXAMINATION REPORT
OF
COMMERCE AND INDUSTRY INSURANCE COMPANY**

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COMPANY PROFILE

The Company was incorporated on December 6, 1957 under the laws of New York. It began business December 27, 1957. All of the outstanding capital stock was owned by its organizer, American Reciprocal Insurers (New York), until June 6, 1966. The ownership shifted when the Company absorbed by merger the American Reciprocal and the subscribers of the reciprocal received shares of the Company in proportion to their respective interests in the surplus funds which had been accumulated by American Reciprocal.

Ownership passed to the Combined Insurance Company of America, Chicago, Illinois on February 15, 1968 through an exchange of shares. Financial control again changed hands on July 15, 1968 when American Home Assurance Company, New York, New, York, acquired over 99% of the outstanding stock. Since 1977 American International Group, Inc. (AIG) has directly owned all of the stock of the Company.

The Company is AIG's primary environmental insurance company. Twelve (12) branch offices are located nationwide. The Company currently has a ten percent (10%) participation in the seven (7) member American Home/National Union Intercompany pool.

The Company's business is largely marketed through large brokerage houses. It is licensed in the District of Columbia and all states. The Company was licensed in the State of Colorado on February 21, 1978.

Based on figures supplied by the Colorado Division of Insurance's Industry Statistical Reports, the Company reported direct written workers' compensation premiums in Colorado for the calendar year 2002 of \$11,490,000 and for the calendar year 2003 of \$14,297,000, which represents a 1.27% and 1.64% market share, respectively, for workers' compensation insurance in Colorado.

(Note: With the exception of industry statistics, the Company's history is derived from information found in Best's Insurance Reports – Property Casualty, US, 2004 Edition).

PURPOSE AND SCOPE OF EXAMINATION

This market conduct report was prepared by independent examiners contracting with the Colorado Division of Insurance for the purpose of auditing certain business practices of insurers licensed to conduct the business of insurance in the State of Colorado. This examination is in accordance with Colorado Insurance Law Section 10-1-204, C.R.S., which empowers the Commissioner to supplement his resources to conduct market conduct examinations. The findings in this report, including all work product developed in its production, are the sole property of the Colorado Division of Insurance.

The purpose of this examination was to determine the Company's compliance with Colorado insurance laws and with generally accepted operating principles related to workers' compensation insurance. Examination information contained in this report should serve only those purposes. The conclusions and findings of this examination report are public record. The preceding statements are not intended to limit or restrict the distribution of this report.

This examination was governed by, and performed in accordance with, procedures developed by the National Association of Insurance Commissioners, the Colorado Division of Insurance and the Insurance Regulatory Examiners Society. In reviewing material for this report, the examiners relied primarily on records and materials maintained by the Company. The examination period covered the period from July 1, 2002 to June 30, 2003 for audited policies on which unit statistical cards were due to have been filed. A sample of policies from the calendar year 2004 was also reviewed, however, to determine the Company's current rating and underwriting practices.

File sampling was based on a review of audited policies, with accompanying claims, and claims for policies with large and small deductibles. A sample of 2004 policies was also reviewed for rating and underwriting practices. Samples were systematically selected by using ACL™ software and computer data files provided by the Company. Sample sizes were chosen based on procedures developed by the National Association of Insurance Commissioners. Upon review of each sampled policy and claim, any concerns or discrepancies were noted on comment forms and these comment forms were delivered to the Company for review. Once the Company was advised of a finding contained in a comment form, the Company had the opportunity to respond. For each finding the Company was requested to agree or disagree and justify the Company's noted action. At the conclusion of the examination, the Company was provided a summary of the findings for each sample. The report of the examination is, in general, a report by exception. Therefore, much of the material reviewed will not be contained in this written report as references to any practices, procedures, or files manifesting no errors were omitted.

An error tolerance level of plus or minus ten dollars (\$10.00) was allowed in most cases where monetary values were involved. However, in cases where monetary values were generated by computer or other systemic methodology, a zero (\$0) tolerance level was applied in order to identify possible system errors. Additionally, a zero (\$0) tolerance level was applied in instances where there appeared to be a consistent pattern of deviation from the Company's established policies, procedures, rules and/or guidelines. When sampling was involved, a minimum error tolerance level of five percent (5%) was established to determine reportable exceptions. However, if an issue appeared to be systemic, or when due to the sampling process it was not feasible to establish an exception percentage, a minimum error tolerance percentage was not utilized. Also, if more than one sample was reviewed in a particular area of the examination (e.g. timeliness of claims payment), and if one or more of the samples yielded an exception rate of five percent (5%) or more, the results of any other samples with exceptions percentages less than five percent (5%) were also included.

This report contains information regarding exceptions to Colorado insurance laws. The examination included review of the following three (3) areas of Company operations:

1. Company Operations/Management
2. Underwriting and Rating
3. Unit Statistical Card Reporting

All unacceptable or non-complying practices may not have been discovered during the course of this examination. Additionally, findings may not be material to all areas that would serve to assist the Commissioner. Failure to identify or criticize specific Company practices does not constitute acceptance by the Colorado Division of Insurance of such practices. This report should not be construed to endorse or discredit any insurance company or insurance product. Statutory cites and regulation references are as of the period under examination unless otherwise noted. Examination report recommendations not referencing specific insurance laws and/or regulations may be presented to encourage improvement in Company practices and operations and to ensure consumer protection. Examination findings may result in administrative action by the Division of Insurance.

EXAMINERS' METHODOLOGY

The examiners reviewed the Company's Workers' Compensation underwriting and unit statistical card reporting practices to determine compliance with Colorado insurance law as outlined in Exhibit 1.

Exhibit 1

Law	Subject
Section 10-3-1103	Unfair methods of competition and unfair or deceptive acts or practices prohibited.
Section 10-4-1104	Unfair methods of competition and unfair or deceptive acts or practices.
Section 10-4-110	Notice of intent prior to nonrenewal of certain policies of insurance.
Section 10-4-110.5	Notice of intent prior to unilateral increase in premium or decrease in coverage previously provided of certain policies of insurance.
Section 10-4-113	Exemptions.
Section 10-4-401	Purpose – applicability.
Section 10-4-413	Records required to be maintained.
Section 10-4-416	Prohibiting changes in rates or coverages.
Section 10-4-421	Notice of rate increases and decreases.
Regulation 1-1-7	Market Conduct Record Retention.
Regulation 1-1-8	Penalties And Timelines Concerning Division Inquiries And Document Requests.
Regulation 5-1-11	Risk Modification Plans.
Regulation 5-3-1	Workers' Compensation Risk Management Regulation.
Regulation 5-3-2	Workers' Compensation Insurance Data Reporting Regulation.
Regulation 5-3-3	Concerning Workers' Compensation Deductible Policies in Excess of \$5,000.
Regulation 5-3-4	Concerning Standards for Not-At-Fault Motor Vehicle Accidents Under Workers' Compensation, Loss Limitation in Calculating Experience Modifications and Distribution of Losses in Excess of The Loss Limitation.
Regulation 5-3-5	Workers' Compensation Deductible Reimbursement.

Company Operations/Management

The examiners reviewed Company implementation and quality controls, record retention, and timely cooperation with the examination process.

Contract Forms and Endorsements

Forms and endorsements used by the Company in writing Workers' Compensation policies containing Colorado exposures are those filed with the Colorado Division of Insurance by the National Council on Compensation Insurance (NCCI) and no review of these forms was made.

Audited Policies

For the period under examination, the examiners systematically selected the following underwriting samples to determine compliance with underwriting and rating requirements:

Review Lists	Population	Sample Size	Percentage to Population
Audited Policies with Experience Modifiers	349	50	14%
Audited Policies without Experience Modifiers	100	50	50%
Current Policies	562	50	9%

Underwriting and Rating

The examiners reviewed the rate and rule filings, statistical justifications, and methodology submitted to the Colorado Division of Insurance for the period under examination. This information was then compared against samples of audited policies with experience modifiers and audited policies without experience modifiers to determine compliance with NCCI loss costs, filed loss costs factors, audited payroll information, experience modifiers, schedule rating, officer and sole proprietor payrolls, and Colorado cost containment and designated medical provider requirements.

Unit Statistical Card Reporting

For the period under examination, the examiners systematically selected the following samples of claims from audited policies with experience modifiers and from policies with large and small deductibles to determine compliance with NCCI unit statistical card reporting requirements:

Review Lists	Population	Sample Size	Percentage to Population
Claims from Audited Policies with Experience Modifiers	62	62	100%
Claims from Audited Policies Without Experience Modifiers	19	19	100%
Additional Claims from Policies with Large and Small Deductibles	60	60	100%

EXAMINATION REPORT SUMMARY

The examination resulted in a total of six (6) issues arising from the Company's apparent failure to comply with Colorado insurance laws that govern all property and casualty insurers operating in the State of Colorado. These issues involved the following Company operations:

Company Operations/Management

In the area of company operations/management, one (1) compliance issue is addressed in this report. This issue arises from Colorado statutory and regulatory requirements that must be followed when writing workers' compensation policies containing Colorado exposures. In regard to this one (1) company operations/management practice, it is recommended that the Company review its company operations/management procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance laws.

The one compliance issue addressed in this phase is as follows:

- Failure of the Company, in some cases, to maintain required records when writing workers' compensation policies containing Colorado exposures.

Underwriting and Rating

In the area of underwriting and rating, four (4) compliance issues are addressed in this report. These issues arise from Colorado statutory and regulatory requirements that must be followed when writing workers' compensation policies containing Colorado exposures. In regard to these four (4) underwriting and rating practices, it is recommended that the Company review its underwriting and rating procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance laws.

The four (4) compliance issues addressed in this phase are as follows:

- Failure of the Company to require insureds to indicate on a form their awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files.
- Failure of the Company to require insured business entities to indicate on a form their awareness of the premium differential available when an insured selects a designated medical provider and to retain this form in the insureds' underwriting files.
- Failure of the Company, in some cases, to use experience modification factors promulgated by NCCI.
- Failure of the Company, in some cases, to apply correct rating methodology when rating workers' compensation policies containing Colorado exposures.

Unit Statistical Card Reporting

In the area of unit statistical card reporting, one (1) compliance issue was addressed in this report. This issue arises from Colorado statutory and regulatory requirements that must be followed when writing workers' compensation policies containing Colorado exposures. In regard to this one (1) unit statistical card reporting practice, it is recommended that the Company review its unit statistical card reporting procedures and make the necessary changes to ensure future compliance with applicable Colorado insurance law.

The one (1) compliance issue addressed in this phase is as follows:

- Failure of the Company, in some cases, to correctly report unit statistical card information to NCCI when writing workers compensation policies containing Colorado exposures.

A copy of the Company's response, if applicable, can be obtained by contacting the Company or the Colorado Division of Insurance.

Results of any previous Market Conduct Examinations are available on the Colorado Division of Insurance's website at www.dora.state.co.us/insurance or by contacting the Colorado Division of Insurance.

MARKET CONDUCT EXAMINATION REPORT

PERTINENT FACTUAL FINDINGS

COMMERCE AND INDUSTRY INSURANCE COMPANY

COMPANY OPERATIONS/MANAGEMENT
FINDINGS

Issue A: Failure of the Company, in some cases, to maintain required records when writing workers' compensation policies containing Colorado exposures.

Section 10-4-401(3)(b), C.R.S., Purpose – applicability, states in part:

Type II kinds of insurance, regulated by open competition between insurers, including ...workers' compensation and employer's liability incidental thereto and written in connection therewith for rates filed by insurers, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner; ...

Section 10-4-413, C.R.S., Records required to be maintained, states in part:

(1) Every insurer...shall maintain reasonable records, of the type and kind reasonably adapted to its method of operation, of its experience or the experience of its members and of the data, statistics, or information collected or used by it in connection with the rates, rating plans, rating systems, underwriting rules, policy or bond forms, surveys, or inspections made or used by it, so that such records will be available at all reasonable times to enable the commissioner to determine whether such organization, insurer, group, or association and, in the case of an insurer or rating organization, every rate, rating plan, and rating system made or used by it complies with the provisions of this part 4 applicable to it...Such records shall be maintained in an office within this state or shall be made available for examination or inspection by the commissioner at any time, upon reasonable notice.

Colorado Regulation 1-1-7, Market Conduct Record Retention, promulgated under the authority of Section 10-1-109, C.R.S., states in part:

Section 4. Records Required For Market Conduct Purposes

A. Every entity subject to the Market Conduct process shall maintain its books, records, documents and other business records in a manner so that the following practices of the entity subject to the Market Conduct process may be readily ascertained during market conduct examinations, including but not limited to, company operations and management, policyholder services, claims practices, rating, underwriting, marketing, complaint/grievance handling, producer licensing records,... Records for this regulation regarding market conduct purposes shall be maintained for the current calendar year plus two prior calendar years.

B. Each producer of record, if the carrier does not maintain, shall maintain records for each policy sold, and the records shall contain all work papers and written communications in the producer's possession pertaining to the documented policy.

Section 5. Policy Records

A. The following records shall be maintained: A policy record shall be maintained for each policy issued. Policy records shall be maintained so as to show clearly the policy period, basis for rating and any imposition of additional exclusions from or exceptions to coverage... Policy records need not be segregated from the policy records of other states so long as the records are readily available to market conduct examiners as required under this regulation.

B. Policy records shall include at least the following: ...

(2) Any declaration pages (the initial page and any subsequent pages), the insurance contract, any certificates evidencing coverage under a group contract, any endorsements or riders associated with a policy, any termination notices, and any written or electronic correspondence to or from the insured pertaining to the coverage. A separate copy of the record need not be maintained in the individual policy to which the record pertains, provided it is clear from the insurer's other records or systems that the record applies to a particular policy and that any data contained in the record relating to that policy, as well as the actual policy, can be retrieved or recreated; ...

(4) Any guidelines, manuals or other information necessary for the reconstruction of the rating, underwriting, and claims handling of the policy. Presentation at the site of a market conduct examination of a single copy of each of the above shall satisfy this requirement. If a rating, underwriting, or claims handling record is computer based, the records used to input the information into the computer system shall also be available to the examiners. These types of records include, but are not limited to, the application, where applicable, the policy form including any amendments or endorsements, rating manuals, underwriting rules, credit reports or scores, claims history reports, previous insurance coverage reports, e.g., MIB questionnaires, internal reports, loans and underwriting and rating notes.

Regulation 5-1-10, Rate and Rule Submissions Property and Casualty Insurance, promulgated pursuant to the authority of Sections 10-1-109, 10-3-1110, 10-4-404, and 10-4-404.5, C.R.S., states in part:

Section 5. Rules

C. Rule Filing General Requirements

2. Every property and casualty company, including those writing workers' compensation and title insurance, is required by this regulation to provide a list of minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

Colorado Regulation 5-1-11, under the authority of Section 10-1-109, 10-4-401, 10-4-403, 10-4-404 and 10-4-408, C.R.S., states in part:

III. RULES

A. Definitions...

13. "Rate modification plan" (commonly called Schedule Rating Plan or Individual Risk Premium Modification Plan) means a rating plan or procedure which provides a listing of various risk characteristics or conditions and a range of modification factors which may be applied for these characteristics or conditions to the manual rate of a particular insurance risk...

B. Rate Modification Plans

Rate modification plans, justified according to the standards herein, are permitted. However, the Commissioner has determined that the use of unjustified rate modification plans is not reasonable, is not objective and is unfairly discriminatory. Therefore, the use of unjustified rate modification plans in rating of commercial property and casualty insurance risks located in Colorado is prohibited...

The following elements shall be considered in determining whether or not a rate modification plan, or its use, is justified:

1. Rate modification plans must be used to acknowledge variance in risk characteristics and not merely to gain competitive advantage.
2. Rate modification plans must be based only on rating characteristics not already reflected in the manual rates. The plans must clearly indicate the objective criteria to be used...
4. Individual underwriting files must contain the specific criteria and document the particular circumstances of the risk that support each debit or credit. This documentation must exist in the individually rated risk or underwriting file to enable the commissioner to verify compliance with this regulation. Documentation may include, but is not limited to, inspection reports, photographs, agent observations and findings, insured's formal safety plans, premises evaluations, and narrative reports covering other aspects of the risk. For the purpose of workers' compensation insurance, documentation must include a copy of the employer's Colorado Cost Containment Certificate if a premium dividend is allowed. Misclassification of a risk will be considered a modification without justification.
5. Any rate modification plan designed to be applied simultaneously to property, liability, or vehicle coverage shall contain reasonable factors that give appropriate recognition to the distinct exposures involved in such coverages.
6. Once an insurer has filed a rate modification plan, its use is mandatory. Insurers may use judgment in selecting the amount of credit or debit stated within a range of credits or debits. However, such credits or debits must be applied uniformly in a

nondiscriminatory manner for all eligible classes of risks eligible under a rate modification plan...

8. Once a rate modification plan has been applied to a risk and a credit or debit established, no change in the established credit or debit can be made without appropriate justification and documentation. If such justification and documentation becomes available during the policy period, the established credit or debit cannot be changed until the anniversary date of the insurance policy...

10. Any rate modification plan must provide that when a risk is rated below average (debited), an insured or applicant, upon request, will be advised by the insurer of the factors which resulted in the adverse rating so that the insured or applicant will be fairly apprised of any corrective action that might be appropriate with respect to the insurance risk.

Reference is also made to Section 8-41-202, C.R.S., Rejection of coverage by corporate officers and others, which states in part:

(1) Notwithstanding any provision of article 40 to 47 of this title to the contrary, a corporate officer of a corporation or a member of a limited liability company may elect to reject the provisions of articles 40 to 47 of this title. If so elected, said corporate officer or member shall provide written notice on a form approved by the division through a rule promulgated by the director of such election to the workers' compensation insurer of the employing corporation or company, if any, by certified mail. If there is no worker's compensation insurance company, the notice should be provided to the division by certified mail. Such notice shall become effective the day following the receipt of said notice by the insurer or the division.

(2) A corporate officer's or member's election to reject the provisions of articles 40 to 47 of this title shall continue in effect so long as the corporation's or company's insurance policy is in effect or until said officer or member, by written notice to the insurer, revokes the election to reject said provisions.

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
349	50	4	8%

An examination of fifty (50) policies, representing 14% of all workers' compensation audited policies with experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed four (4) exceptions (or 8% of the sample) where required records were not maintained. Three (3) policy files did not contain a breakdown and/or justification for the schedule rating applied. One (1) policy file did not contain a signed officer exclusion form.

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
100	50	1	2%

An examination of fifty (50) policies, representing 50% of all workers' compensation audited policies without experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed one (1) exception (or 2% of the sample) where the policy file did not contain a breakdown or justification for the schedule rating applied.

WORKERS' COMPENSATION POLICIES – 2004 CALENDAR YEAR

Population	Sample Size	Number of Exceptions	Percentage to Sample
562	50	2	4%

An examination of fifty (50) policies, representing 9% of all workers' compensation policies written by the Company during the 2004 calendar year which contained Colorado exposures were examined to determine the Company's current underwriting and rating practices. This sample showed two (2) exceptions (or 4% of the sample) where the policy files did not contain a breakdown or justification for the schedule rating applied.

Recommendation #1

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Sections 10-4-401 and 10-4-413, C.R.S., and Colorado Regulations 1-1-7, 5-1-10 and 5-1-11. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that it will maintain required records when writing workers' compensation policies containing Colorado exposures in compliance with Colorado insurance law.

UNDERWRITING AND RATING
FINDINGS

Issue B: Failure of the Company to require insureds to indicate on a form their awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files.

Colorado Regulation 5-1-11, Risk Modification Plans, promulgated pursuant to the authority of Section 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S., states in part:

(III) RULES...

(D) Workers' Compensation Cost Containment Disclosures

All workers' compensation insurers, including the Colorado Compensation Insurance Authority, shall disclose the availability of cost containment certification by the Colorado Workers' Compensation Cost Containment Board and the potential premium savings on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy. Such disclosure applies regardless of whether or not a risk is experience or schedule rated. Insurers shall require that the insured business entity indicate, on a form developed by the insurer, which states that the business entity is aware of the premium dividend if the business entity's risk management program is certified by the Colorado Cost Containment Board. This form shall be made part of the insured business entity's underwriting file.

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
349	50	50	100%

An examination of fifty (50) policies, representing 14% of all workers' compensation audited policies with experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed fifty (50) exceptions (or 100% of the sample) where the Company did not require insureds to indicate on a form awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files. These potential savings are usually expressed as percentages.

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
100	50	50	100%

An examination of fifty (50) policies, representing 50% of all workers' compensation audited policies without experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed fifty (50) exceptions (or 100% of the sample) where the Company did not require insureds to indicate on a form awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files. These potential savings are usually expressed as percentages.

WORKERS' COMPENSATION POLICIES – 2004 CALENDAR YEAR

Population	Sample Size	Number of Exceptions	Percentage to Sample
562	50	50	100%

An examination of fifty (50) policies, representing 9% of all workers' compensation policies written by the Company during the 2004 calendar year which contained Colorado exposures were examined to determine the Company's current underwriting and rating practices. This sample showed fifty (50) exceptions (or 100% of the sample) where the Company did not require insureds to indicate on a form awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files. These potential savings are usually expressed as percentages.

Recommendation #2

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 5-1-11. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that it will require insureds to indicate on a form their awareness of the potential savings available when they obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and that it will retain this form in the insureds' underwriting files in compliance with Colorado insurance law.

Issue C: Failure of the Company to require insured business entities to indicate on a form awareness of the premium differential available when an insured selects a designated medical provider and to retain this form in the insureds' underwriting files.

Colorado Regulation 5-1-11, Risk Modification Plans, promulgated pursuant to the authority of Section 10-1-109, 10-4-401, 10-4-403, 10-4-404, and 10-4-408, C.R.S., states in part:

(III) RULES...

(D)...On an annual basis, all workers' compensation insurers, including the Colorado Compensation Insurance Authority, shall disclose the premium differential on the face of the insurance policy or in a separate disclosure form attached as an addendum to the policy when the policyholder has selected a designated medical provider. Such disclosure applies regardless of whether a risk is experience rated or schedule rated. *Insurers shall require that the insured business entity indicate, on a form developed by the insurer, which states that the business entity is aware of the premium differential for selecting a designated medical provider. This form shall be made part of the insured business entity's underwriting file.* (Emphases added.)

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
349	50	50	100%

An examination of fifty (50) policies, representing 14% of all workers' compensation audited policies with experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to July 30, 2003, showed fifty (50) exceptions (or 100% of the sample) in which no form on which insured business entities had indicated awareness of the premium differential given for selecting a designated medical provider was found in the insureds' underwriting files. This premium differential is generally expressed as a percentage.

**WORKERS' COMPENSATION POLICIES WITHOUT EXPERIENCE MODIFIERS –
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
100	50	50	100%

An examination of fifty (50) policies, representing 50% of all workers' compensation audited policies without experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed fifty (50) exceptions (or 100% of the sample) in which no form on which insured business entities had indicated awareness of the premium differential given for selecting a designated medical provider was found in the insureds' underwriting files. This premium differential is generally expressed as a percentage.

WORKERS' COMPENSATION POLICIES – 2004 CALENDAR YEAR

Population	Sample Size	Number of Exceptions	Percentage to Sample
562	50	50	100%

An examination of fifty (50) policies, representing 9% of all workers' compensation policies written by the Company during the 2004 calendar year which contained Colorado exposures were examined to determine the Company's current underwriting and rating practices. This sample showed fifty (50) exceptions (or 100% of the sample) where the Company did not require insured business entities to indicate on a form awareness of the premium differential given for selecting a designated medical provider and retain this form in insureds' underwriting files. This premium differential is generally expressed as a percentage.

Recommendation #3

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Colorado Regulation 5-1-11. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that it will require insured business entities to indicate their awareness of the premium differential available if they select a designated medical provider and to retain this form in the insured's underwriting file in compliance with Colorado insurance law.

Issue D: Failure of the Company, in some cases, to use experience modification factors promulgated by NCCI.

Section 10-4-401, C.R.S., Purpose – applicability, states in part:

- (1) The purpose of this part 4 is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory, to prohibit price-fixing agreements and other anticompetitive behavior by insurers, to promote price competition among insurers, to provide rates that are responsive to competitive market conditions, and to improve the availability and reliability of insurance...
- (3) The kinds of insurance subject to this part 4 shall be divided into two classes, as follows:
 - (a) Type I kinds of insurance, regulated by prior filing and approval of rating information, which shall be subject to all provisions of this part 4 unless specifically excluded by the terms of a section. The following kinds of insurance shall be classified as type I:
 - (I) Workers' compensation and employer's liability incidental thereto for any pure premium rate filed by a rating organization...
 - (b) Type II kinds of insurance, regulated by open competition between insurers, including... workers' compensation and employer's liability incidental thereto and written in connection therewith for rates filed by insurers, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner;...

Regulation 5-1-10, Rate and Rule Submissions Property and Casualty Insurance, promulgated pursuant to the authority of Sections 10-1-109, 10-3-1110, 10-4-404, and 10-4-404.5, C.R.S., states in part:

Section 5. Rules

C. Rule Filing General Requirements

2. Every property and casualty company, including those writing workers' compensation and title insurance, is required by this regulation to provide a list of minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

NCCI's Experience Rating Plan Manual states in part:

Part One – Page 1

I.A.6. Issuance of Modification

The experience modification for experience rated risks shall be calculated and issued by the appropriate rating organization listed in the Appendix.

The following chart illustrates the significance of errors versus the population and sample examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
349	50	3	6%

An examination of fifty (50) policies, representing 14% of all workers' compensation audited policies with experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed three (3) exceptions (or 6% of the sample) in which the experience modification factor used was not the one promulgated by NCCI.

Recommendation #4

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Section 10-4-401, C.R.S. and Colorado Regulation 5-1-10. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that all workers' compensation policies with Colorado exposures will contain the experience modification factors promulgated by NCCI in compliance with Colorado insurance law.

Issue E: Failure of the Company, in some cases, to apply correct rating methodology when rating workers' compensation policies containing Colorado exposures.

Section 10-4-401, C.R.S., Purpose – applicability, states in part:

- (1) The purpose of this part 4 is to promote the public welfare by regulating insurance rates to the end that they not be excessive, inadequate, or unfairly discriminatory, to prohibit price-fixing agreements and other anticompetitive behavior by insurers, to promote price competition among insurers, to provide rates that are responsive to competitive market conditions, and to improve the available and reliability of insurance...
- (3) The kinds of insurance subject to this part 4 shall be divided into two classes, as follows:
 - (a) Type I kinds of insurance, regulated by prior filing and approval of rating information, which shall be subject to all provisions of this part 4 unless specifically excluded by the terms of a section. The following kinds of insurance shall be classified as type I:
 - (I) Workers' compensation and employer's liability incidental thereto for any pure premium rate filed by a rating organization...
 - (b) Type II kinds of insurance, regulated by open competition between insurers, including... workers' compensation and employer's liability incidental thereto and written in connection therewith for rates filed by insurers, and all other kinds of insurance subject to this part 4 and not specified in paragraph (a) of this subsection (3), including the expense and profit components of workers' compensation insurance, which shall be subject to all the provisions of this part 4 except for sections 10-4-405 and 10-4-406. Concurrent with the effective date of new rates, type II insurers shall file rating data, as provided in section 10-4-403, with the commissioner;...

Regulation 5-1-10, Rate and Rule Submissions Property and Casualty Insurance, promulgated pursuant to the authority of Sections 10-1-109, 10-3-1110, 10-4-404, and 10-4-404.5, C.R.S., states in part:

Section 5. Rules

C. Rule Filing General Requirements

2. Every property and casualty company, including those writing workers' compensation and title insurance, is required by this regulation to provide a list of minimum premiums, schedule of rates, rating plans, dividend plans, individual risk modification plans, deductible plans, rating classifications, territories, rating rules, rate manuals and every modification of any of the foregoing which it proposes to use. Such filings must state the proposed effective date thereof, and indicate the character and extent of the coverage contemplated.

NCCI's Basic Manual states in part:

Rule X – Cancellation...

C. Premium Determination – Cancellation by the Insured When Retiring From Business
Compute the premium as provided in B. above if a policy is canceled by the insured when...

2. All interest in any business covered by the policy has been sold, or
 3. The insured has retired from all business covered by the policy.
- (Examiners' Note: B. above requires the policy to be cancelled pro rata.)

The following charts illustrate the significance of errors versus the populations and samples examined:

**WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JULY 1, 2002 TO JUNE 30, 2003**

Population	Sample Size	Number of Exceptions	Percentage to Sample
349	50	2	4%

An examination of fifty (50) policies, representing 14% of all workers' compensation audited policies with experience modifiers which contained Colorado exposures, written by the Company during the period July 1, 2002 to June 30, 2003, showed two (2) exceptions (or 4% of the sample) in which the Company used incorrect methodology to rate the policies. One (1) policy had been rated with an officer's payroll excluded; however, the officer had elected to be included. One (1) policy showed a classification of 8017 when the correct classification was 9521.

**WORKERS' COMPENSATION SHORT RATE CANCELLATIONS
FROM JULY 1, 2002 TO DECEMBER 31, 2004**

Population	Sample Size	Number of Exceptions	Percentage to Sample
19	19	5	26%

An examination of nineteen (19) policies, representing 100% of the Company's workers' compensation policies that had been cancelled short rate during the period from July 1, 2002 to December 31, 2004, showed five (5) exceptions (or 26% of the sample) in which policies had been cancelled by the insureds because the business was sold or the insured had retired from the business. NCCI requires that policies cancelled for either of these reasons be cancelled pro rata. These five (5) exceptions were cited as rating errors because, by cancelling the policies short rate instead of pro rata, the Company overcharged the insureds.

Recommendation #5

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Section 10-4-401, C.R.S. and Colorado Regulation 5-1-10. In the event the Company is unable to provide such documentation, it should be required to provide written procedures to the Colorado Division of Insurance which will ensure that all workers' compensation policies with Colorado exposures will contain correct rating methodology in compliance with Colorado insurance law.

UNIT STATISTICAL CARD REPORTING
FINDINGS

Issue F: Failure of the Company, in some cases, to correctly report unit statistical card information to NCCI when writing workers compensation policies containing Colorado exposures.

Section 10-4-402, C.R.S., Definitions, states in part:

(3) "Rating organization" means every person, other than an admitted insurer, which has as its object or purpose the making of pure premium rates, rating plans, or rating systems...

Section 10-4-404, C.R.S., Rate administration, states in part:

(1) The commissioner shall promulgate rules and regulations which shall require each insurer to record and report its loss and expense experience and such other data, including reserves, as may be necessary to determine whether rates comply with the standards set forth in Section 10-4-403. Every insurer or rating organization shall provide such information and in such form as the commissioner may require. No insurer shall be required to record or report its loss or expense experience on a classification basis that is inconsistent with the rating system used by it. The commissioner may designate one or more rating organizations or advisory organizations to assist him in gathering and in compiling such experience and data. No insurer shall be required to record or report its experience to a rating organization unless it is a member of such organization.

NCCI's Workers Compensation Statistical Plan Manual states in part:

Part IV-LOSS DATA

9. Incurred Indemnity and Incurred Medical

Losses must be reported split into their indemnity and medical components.

Report separately, as of the valuation date, the total of all paid and outstanding indemnity and all paid and outstanding medical for each claim or group of claims.

The following charts illustrate the significance of errors versus the populations and samples examined:

**CLAIMS FOR WORKERS' COMPENSATION POLICIES WITH EXPERIENCE MODIFIERS
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
62	62	1	2%

An examination of sixty-two (62) claims, representing 100% of the claims for the workers' compensation audited policies with experience modifiers examined that did not have deductibles, showed one (1) exception (or 2% of the sample) in which the Company reported an incorrect medical payment amount on the insured's unit statistical card.

**DEDUCTIBLE CLAIMS FOR WORKERS' COMPENSATION POLICIES
WRITTEN JANUARY 1, 2002 TO DECEMBER 31, 2002**

Population	Sample Size	Number of Exceptions	Percentage to Sample
60	60	27	45%

An examination of sixty (60) deductible claims for audited policies, representing 100% of all workers' compensation audited policies with deductibles examined, showed twenty-seven (27) exceptions (or 45% of the sample) in which the Company reported incorrect claims information on the insured's unit statistical card. Twenty-five (25) claims, all from the same unit card for one (1) insured, did not have the deductible reimbursement amount reported on the unit card. One (1) claim had a deductible reimbursement amount of \$5,000 reported but the policy deductible was only \$1,000. One (1) claim had been reported on the wrong insured's unit statistical unit card.

Recommendation #6

Within thirty (30) days, the Company should be required to provide documentation demonstrating why it should not be considered in violation of Section 10-4-404, C.R.S. If the Company is unable to provide such documentation, it should be required to provide written evidence to the Colorado Division of Insurance that it will correctly report unit statistical card information to NCCI in compliance with Colorado insurance law.

SUMMARY OF RECOMMENDATIONS LOCATOR
EXAMINATION REPORT ON

COMMERCE AND INDUSTRY INSURANCE COMPANY

	ISSUE	RECOMMENDATION	PAGE #
A	Failure of the Company, in some cases, to maintain required records when writing workers' compensation policies containing Colorado exposures.	1	17
B	Failure of the Company to require insureds to indicate on a form awareness of the potential savings available when insureds obtain cost containment certification by the Colorado Workers' Compensation Cost Containment Board and to retain this form in the insureds' underwriting files.	2	20
C	Failure of the Company to require insured business entities to indicate on a form awareness of the premium differential available when an insured selects a designated medical provider and to retain this form in the insureds' underwriting files.	3	22
D	Failure of the Company, in some cases, to use experience modification factors promulgated by NCCI.	4	24
E	Failure of the Company, in some cases, to apply correct rating methodology when rating workers' compensation policies containing Colorado exposures.	5	27
F	Failure of the Company, in some cases, to correctly report unit statistical card information to NCCI when writing workers' compensation policies containing Colorado exposures.	6	30

Independent Market Conduct Examiners
LUCILLE E. WHITTLE, CIE
&
K. C. LANG, AIE
participated in this examination and in the preparation of this report.